

EDMONDS CITY COUNCIL APPROVED MINUTES

September 21, 2010

At 6:00 p.m., Mayor Cooper announced that the City Council would meet in executive session regarding labor negotiation strategy. He stated that the executive session was scheduled to last approximately 60 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. No action was anticipated to occur as a result of meeting in executive session. Elected officials present at the executive session were: Mayor Cooper, and Councilmembers Bernheim, Plunkett, Buckshnis, Peterson, Petso and Wilson. Others present were City Attorney Scott Snyder, Human Resources Director Debi Humann, Police Chief Al Compaan, and City Clerk Sandy Chase. The executive session concluded at 7:03 p.m.

The regular City Council meeting was called to order at 7:08 p.m. by Mayor Cooper in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Mike Cooper, Mayor
Steve Bernheim, Council President
D. J. Wilson, Councilmember
Michael Plunkett, Councilmember
Lora Petso, Councilmember
Strom Peterson, Councilmember
Diane Buckshnis, Councilmember

ELECTED OFFICIALS ABSENT

Adrienne Fraley-Monillas, Councilmember

STAFF PRESENT

Al Compaan, Police Chief
Stephen Clifton, Community Services/Economic
Development Director
Brian McIntosh, Parks & Recreation Director
Phil Williams, Public Works Director
Lorenzo Hines, Finance Director
Rob Chave, Planning Manager
Bertrand Hauss, Transportation Engineer
Rob English, City Engineer
Carl Nelson, CIO
Michael Clugston, Planner
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Councilmember Wilson requested Item E be removed from the Consent Agenda.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY.
The agenda items approved are as follows:

A. ROLL CALL

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF SEPTEMBER 7, 2010.

- C. **APPROVAL OF CLAIM CHECKS #121101 THROUGH #121213 DATED SEPTEMBER 9, 2010 FOR \$1,729,084.52, AND CLAIM CHECKS #121214 THROUGH #121351 DATED SEPTEMBER 16, 2010 FOR \$521,065.12.**
- D. **ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM DONNA L. BRESKE (\$5,000.00).**
- F. **ORDINANCE NO. 3807 – AMENDING THE EDMONDS CITY CODE, TITLE 10, TO ADD A NEW CHAPTER 10.95 CITIZENS' TREE BOARD.**
- G. **AUTHORIZATION OF RESOLUTION NO. 1235 TO SUBMIT A GRANT APPLICATION FOR 2011 SNOHOMISH COUNTY CDBG PUBLIC FACILITIES & INFRASTRUCTURE PROJECTS FUNDING FOR SENIOR CENTER SIDING REPLACEMENT AND WATERPROOFING.**

ITEM E: INTERLOCAL AGREEMENT WITH SERS FOR LOW COST DARK FIBER,

Councilmember Wilson asked for background on the proposed Interlocal Agreement with SERS. CIO Carl Nelson explained a major regional Public Safety project involving all Snohomish County Police and Fire Departments, as well as the County Sheriff, is underway to replace and unify the 911 and Police/Fire/EMS records system. As part of that effort, Snohomish Emergency Radio System (SERS) pursued a 30-year Irrevocable Right of Use (IRU) agreement with Blackrock to connect the County data center and the region's two 911 centers with diverse redundant fiber routes. As part of the negotiations, SERS asked Blackrock to also connect any cities it passed through to the county.

The terms that were eventually reached by SERS and Blackrock require Blackrock to connect the two 911 centers, provide interconnectivity within the county and provide six cities three years free use of fiber that Blackrock owns in those cities. The term of the agreement is 30 years. Per the agreement, at the end of 3 years, the affected cities could combine their resources to pay an additional \$300,000 one-time fee. If the cities chose not to, each city would begin paying the \$500/month for the Blackrock connection at the end of 3 years. As the intermediary step, Edmonds has the opportunity to enjoy the use of Blackrock fiber for 3 years. In order for this to occur the City needs to enter into an Interlocal Agreement with SERS to take advantage of this opportunity and to release SERS from financial liability.

Councilmember Wilson observed the City pays \$500/month for use of the Blackrock fiber; the savings over 3 years would be approximately \$18,000. He asked whether the City's portion would be 1/6th of the \$300,000 in 6 years. Mr. Nelson answered he assumed it would be equally proportioned between the six cities because the cities equally benefit from the fiber connection. Councilmember Wilson summarized the alternative was \$500/month for 30 years.

Councilmember Wilson asked how the City used the Blackrock fiber assuming it was available in a limited area of the City and the City has its own fiber. Mr. Nelson explained the Blackrock fiber connection is from the City's Public Works facility to Snohomish County. It is currently used for video arraignment and other intergovernmental purposes. There are also plans to use that fiber to provide service to other cities.

Councilmember Wilson asked the terms to get out of the contract. Mr. Nelson answered it was four years. Councilmember Wilson inquired about the potential downside of entering into the Interlocal Agreement. Mr. Nelson answered the City received 3 years of free fiber. Councilmember Wilson pointed out the City was assuming some liability. Mr. Nelson explained this agreement is the result of a larger agreement that provided the connection between the 911 centers and the County. The cities expressed interest in the three years of free fiber; the original agreement contains a clause that if the cities pursue the three years of free fiber and one city defaults, and there was some question with regard to who would be liable for that default.

Councilmember Wilson observed the default could be a city choosing not to participate in the future. Therefore if a city chose not to participate, the other cities would have a \$300,000 liability. Mr. Nelson answered there was no commitment to spend the \$300,000 in the future. This agreement provides 3 years of free fiber and leaves open the option for 30 years of fiber at a very low cost.

Council President Bernheim asked whether this was reviewed by committee. Mr. Nelson answered it was reviewed by the Finance Committee.

Councilmember Plunkett asked whether the agreement terminated at the end of 30 years. Mr. Nelson explained at the end of 30 years, the City would pay \$500/month, the same arrangement the City has had with Blackrock for the past year. Councilmember Plunkett asked what would happen if the City terminated the agreement in three years. Mr. Nelson answered per the agreement SERS reached with Blackrock, at the end of 3 years, the cities could combine their resources to pay an additional \$300,000 one-time fee and they would also be given a 30-year Irrevocable Right of Use (IRU). If the cities chose not pursue an IRU, each city would start paying the \$500/mo for the Blackrock connection at the end of 3 years.

Finance Director Lorenzo Hines explained at the end of 3 years, the City had the option of paying \$50,000 (1/6th of \$300,000) for 30 years of free fiber or return to the monthly rate of \$500 (\$180,000 over 30 years).

Councilmember Buckshnis clarified the City was currently paying Blackrock \$500/month; the 3 years of free fiber was an incentive for the City to pay its portion of \$300,000 to receive 30 years of free fiber.

Council President Bernheim inquired about the Finance Committee's recommendation with regard to this item. Councilmembers Plunkett and Buckshnis answered the Finance Committee recommended approval. Council President Bernheim pointed out the Finance Committee's recommendation was not included in the agenda memo. Mr. Hines advised the Finance Committee minutes reflect that the Committee recommended approval and forwarded this item to the Council Consent Agenda at last week's meeting.

City Attorney Scott Snyder advised this agreement can be terminated but not without terminating the dark fiber agreement.

Councilmember Wilson suggested in the future the agenda memo reflect action recommended by the Council committee.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE CONSENT AGENDA ITEM E. MOTION CARRIED UNANIMOUSLY.

3. PUBLIC HEARING ON THE PROPOSED UPDATES TO LAND USE PERMIT REVIEW PROCEDURES CONTAINED IN THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) CHAPTERS 20.01 THROUGH 20.08, EXCLUDING 20.05, WHICH INCLUDE STAFF REASSUMING THE PUBLIC NOTICE REQUIREMENTS FOR PROJECT APPLICATIONS; REORGANIZING AND CLARIFYING PORTIONS OF TEXT; AND UPDATING THE PERMIT TYPE MATRIX IN ECDC 20.01.003.A. (FILE NO. AMD20100013).

Planner Mike Clugston explained the Planning Board forwarded to the Council several recommended changes to the Land Use Permit Administration procedures in Title 20. The recommended changes include the two interim zoning ordinances the Council passed in January reestablishing the Council's role in closed record appeals. Other changes include staff reassuming public notice requirements for project permit applications; previously adopted changes made applicants responsible for notification. The proposed changes also include reorganizing and clarifying text to make it more user friendly. The permit matrix in ECDC 20.01.003A was updated to reflect the permits processed in Edmonds and a 90-day permit extension opportunity was added. The final change is the draft Environmental Impact Statement (EIS) was removed from the permit matrix. An EIS is not a land use

decision but a decision-making tool and there are separate requirements elsewhere in the ECDC and State regulations that relate to hearings.

Councilmember Petso referred to language in the proposed ordinance that appeals be typed with a decent size font and printed single sided. She assumed that was for the City's convenience and asked whether an appeal be rejected if those requirements were not met. Mr. Clugston answered the intent was to be able to read the material. City Attorney Scott Snyder pointed out only the Council or the body to whom an appeal is made could dismiss an appeal; staff accepts appeals but does not dismiss appeals.

Councilmember Petso asked the time of close of business for the second floor. Mr. Clugston answered 4:30. Councilmember Petso suggested the appeal deadline be changed from 4:00 to 4:30.

Councilmember Plunkett asked whether the proposed changes reinstated the Council in land use appeals as a quasi judicial body in approximately the same appeals as the Council heard previously. Mr. Snyder answered yes. Councilmember Plunkett asked whether the proposed ordinance required appeals be in writing or allowed oral argument. Mr. Clugston answered the appeal and closed record hearing materials were required to be in writing. Mr. Snyder advised that requirement was contained on page 33-34, Section 20.07.005C, "parties to the appeal may present written arguments to the City Council."

Councilmember Plunkett pointed out the language did not state only written argument. Mr. Snyder recalled the Council's prior direction was to require written argument and that was the intent of the language. The language could be clarified to state only written argument would be accepted. He pointed out the procedures in Section 20.07.005 do not contain a provision for oral argument. The Council's record to date has been to limit the appeal to a written record. Councilmember Plunkett acknowledged that may have been the direction of the Council previously but this Council may be interested in amending that requirement.

Councilmember Buckshnis pointed out the matrix does not define whether the appeal is written or oral. Mr. Snyder explained the purpose of the matrix is to provide a simplified format; each process is described in more detail in later sections of the code.

Councilmember Plunkett explained land use appeals were previously heard by the Council. A different City Council took those decisions away from the City Council and required citizens to go to court. The proposed ordinance reinstates the Council in those decisions. The Council previously discussed whether decisions would be in writing only or whether there would be an opportunity for oral argument. The proposed ordinance requires arguments to be in writing only rather than the previous procedure that allowed written and/or oral argument. He suggested the audience speak to whether oral argument should be allowed or whether argument should be in writing only. He expressed his intent to propose an amendment.

Councilmember Wilson explained Council had never taken itself out of land use decisions. The question was who heard an appeal of a land use decision. In the recent past, Council acted only as legislators and not judges and appeals were sent to a Hearing Examiner. The proposed ordinance returns appeals of land use decisions to the Council. With regard to written versus oral argument, Councilmember Wilson recalled former Development Services Director Duane Bowman advocated for a written appeal process because often when providing oral argument, new information was provided that had the potential to influence the Council's decision.

Councilmember Wilson asked staff's opinion regarding the appropriate and standard practice for land use appeals. Mr. Snyder recalled the concern that former Mayor Haakenson and he raised was that citizens who often are not lawyers inadvertently providing new information during an appeal. This put an enormous burden on the mayor, staff and him to try to review the information while oral argument was underway and identify issues that may be outside the record. There are several ways this can be addressed, first, require argument be in writing. He referred to page 34, paragraph G, pointing out the Council still has the ability to ask questions of the appellant and parties of record. The formal presentation and argument by the appellant and respondent was

eliminated. Another option if the Council wanted to hear oral argument was to put the burden on the parties to object to information outside the record. This often leads to an opportunity for each party to respond and make citations to the record. The result may be delays so that parties can make formal objection and the other party can indicate where the information is contained in the record.

Mr. Snyder commented he often felt uncomfortable during closed record hearings telling citizens they could not say something. Staff's intent is to keep argument to the record and if not, identify a mechanism that removed the Mayor and the City Attorney from seemingly muzzling citizens during their argument. He commented on the difficulty for staff to review a voluminous record while a party was providing comment to determine whether information was/was not contained in the record. If the Council allowed oral argument, he suggested formalizing the process to require objections by the parties.

Mayor Cooper opened the public participation portion of the public hearing.

Roger Hertrich, Edmonds, commented on the importance of the public or appellant having an opportunity to decide whether to submit written materials or provide oral argument. In his experience Mr. Snyder had done an excellent job during oral argument. He recalled a Councilmember who preferred to listen to oral argument over reading the materials. He summarized the Council should allow oral argument. Next, he expressed concern with administrative variances and asked whether there was criteria for administrative variances and whether there were examples to assist the public and Council in understanding what matters were handled by administrative variance. Another topic not addressed by the proposed ordinance was the form in which appeals could be submitted, whether by email, fax, mail, or hand delivery. He was also concerned with development agreements which can address maximum building heights, setback, phasing and design standards. He referred to language in paragraph C on page 34 that states parties to an appeal may present written argument and paragraph D that states while not required, the applicant may submit his written argument. He suggested as written, the ordinance would allow oral or written argument.

Kathy Lester, Edmonds, suggested the appeal process should be allowed to be oral and in writing. She feared eliminating the oral appeal process would reduce citizen participation. Without the ability to provide oral comment, she envisioned a person attending a Council meeting would not have the ability to provide comment on an appeal.

Betty Larman, Edmonds, explained three years ago she appealed an ADB decision to the City Council, using a PowerPoint as part of her presentation. She did not recall Mr. Snyder informing her that she was providing new information. She expressed support for the Council hearing appeals and for the public to witness the proceedings. If information is provided in writing, the public is left out of the process. She expressed support for allowing an appellant to decide whether to provide information in writing or orally.

Rich Senderoff, Edmonds, pointed out some may prefer to speak and some prefer to provide information in writing depending on their abilities and what is more convenient. He recommended the option to provide information orally or in writing be left up to the citizen.

Hearing no further comment, Mayor Cooper closed the public participation portion of the public hearing.

In response to Mr. Hertrich's comment regarding administrative variances, Mr. Snyder explained the Council approved an extensive revision of Chapter 18 a few months ago. That process included consolidation of 30-40 appeal routes for issues such as driveway surface area, street grade, etc. An example of an administrative variance would be to increase the grade of a driveway from 12% to 15%.

With regard to providing appeals in writing or orally, Mr. Snyder explained a written document was required to frame issues and determine whether the appeal was timely. Requiring an appellant to list the issues they are appealing assists with providing order to the process.

With regard to development agreements, Mr. Snyder explained this provision was already in the code, and is a codification of State statute, RCW 36.70A. He agreed that a number of issues could be addressed via a development agreement, one of the primary provisions in the City's code and State statute is the development agreement must comply with the purposes and wording of the zoning ordinance. A development agreement allows minor amendments to development processes and a public hearing is required. To assist citizens, the State statute has been included in the City's development code.

With regard to the use of "may" on page 34, Mr. Snyder explained "may" was used rather than "shall" to ensure once a written appeal was filed, if an applicant felt it was frivolous and did not respond, they did not automatically lose due to a requirement to submit a written response.

With regard to a person attending a Council meeting not having the ability to provide comment on an appeal, Mr. Snyder explained these are closed record appeals and participation is limited to those who participated in the open record hearing.

Mr. Clugston advised appeals must be in writing as there is a fee for filing an appeal.

Councilmember Petso asked whether an applicant could obtain an administrative variance for a height limit and would there be an opportunity for appeal. Mr. Snyder answered an applicant could not obtain an administrative variance for height. Mr. Clugston explained the only way to request a height variance was the variance process via the Hearing Examiner. Mr. Snyder explained the standard topography variance under the City's code, a full open record process, would apply; there is no height variance in the administrative variance process.

Councilmember Petso asked whether a variance could be requested for underground wiring and whether the appeal would come to the Council. Mr. Snyder recalled the undergrounding provisions have no variance authority other than the standard subdivision variance that has variance criteria and is appealable to the Council. He offered to confirm his recollection.

Council President Bernheim commented on the timeframe to submit written materials, suggesting the current requirements contained in 20.07.005.D were somewhat constrained. He suggested consideration be given to expanding the timeline from 12 days before the closed record review to submit written arguments, 7 days to respond to the appellant's argument, 4 days for rebuttal and 2 days for final surrebuttal, to 20 days, 10 days, 5 days and 1 day. Mr. Snyder explained the difficulty was the 120 day rule to act on permits. The process including appeals must be completed within the 120 days exclusive of SEPA review. The proposed requirements already consume approximately a month, leaving only 90 days for the remainder of the process. Planning Manager Rob Chave noted another factor that drives the deadlines is including materials in the Council packet.

With regard to the 4:00 p.m. deadline for submitting an appeal, Mr. Chave explained the City does not accept money after 4:00 p.m. as administrative accounting procedures require all accounts be reconciled by close of business which is 4:30 p.m. Extending the deadline to 4:30 p.m. would create an administrative difficulty.

Councilmember Buckshnis inquired about the liability for oral versus written appeal argument and whether the City has ever had a liability. Mr. Snyder explained the Council must make its decision based on information in the record. If a party injects new information during their argument and staff does not catch it and a Councilmember relies on that information and it is included in the Findings of Fact, the decision could be overturned by the court. If the Council does not want appeal argument in writing which provides an opportunity to ensure that information outside the record is not included, he suggested the burden of proof be placed on the parties to object at the hearing and require the other party to show where in the record the information was contained. The intent was to make the process fair as well as appear to be fair. He recalled times when he has had to inject himself into a person's argument more than he is comfortable with. Councilmember Plunkett

commented Mr. Snyder has always done so expertly and professionally. Mr. Snyder summarized his concern was he did not want to appear to be favoring one side over the other.

Mr. Chave commented the reverse was also true; he recalled a person who was delivering their oral argument and was interrupted by staff questioning whether a fact was in the record. The person became flustered and lost his train of thought. If the materials had been submitted in writing, staff could have identified any information that was outside the record ahead of time. He summarized there was no easy solution but there were problems with both methods.

Councilmember Buckshnis asked how often problems arose with oral argument. Mr. Snyder answered when the Council was holding closed record reviews, it was a rare occasion when information outside the record was not introduced. Councilmember Buckshnis relayed Councilmember Plunkett's comment that there had never been a court issue. Mr. Snyder responded at times it had been very distracting for the person presenting their argument.

With regard to his offer to Councilmember Petso to confirm his recollection, Mr. Snyder reported Chapter 18.05 regarding utility wires does not contain a variance provision. There are exemptions for underground utility substations and high voltage but no variance process.

Councilmember Wilson inquired about Councilmembers incurring personal liability in a quasi judicial proceeding. He asked if a Councilmember would be exposed to personal liability if he/she relied on new information provided during a closed record review and stated their position was based on that information. Mr. Snyder answered not if a Councilmember was acting in good faith based on the information provided. He explained the inability to provide new information at a close record review is due to the GMA's requirement that there only be one open record hearing. If new information is presented in the closed record review, it is essentially a second open record hearing. That is also the reason that only parties of record can provide information. The Council is limited to the record of the first hearing.

Mr. Snyder clarified a Councilmember could always be sued; the City has an indemnity ordinance to protect Councilmembers for the good faith fulfillment of their acts. Under the Appearance of Fairness Doctrine, anyone challenging a Councilmember based on a conflict of interest has the obligation to raise their objection at the earliest opportunity. If a Councilmember refused to recuse themselves and they had a conflict of interest, they could incur some personal liability. If new information was provided and considered, there was no liability for an individual Councilmember, however, there was potential for litigation costs on appeal. He summarized new information provided at the closed record review was a blemish on the record of the proceeding.

Councilmember Wilson pointed out during a closed record review, the Council sits as a judge rather than a legislator. He asked if there were any courts of law in the United States where an appeal could be made without a written brief. Mr. Snyder agreed all appeals must be in writing. At small claims court, parties are not required to brief materials. Councilmember Wilson noted even with written briefs, there was an oral element in courts of law via questioning. As proposed the Council would still have the opportunity to ask questions. Mr. Snyder agreed. Councilmember Wilson summarized eliminating the written brief would be an uncommon practice. Mr. Snyder explained "may" was used in the ordinance to keep the requirement loose so that a written response was not required but the party could attend the closed record review and Council could ask questions if they desired.

Councilmember Plunkett pointed out the Supreme Court and most other courts allowed oral argument. Mr. Snyder agreed.

COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO APPROVE THE CHANGES RECOMMENDED BY THE PLANNING BOARD ON 7/28/10 AND CONTAINED IN EXHIBIT 4, AND DIRECT THE CITY ATTORNEY TO DRAFT AN ORDINANCE FOR COUNCIL APPROVAL.

COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER PETSO, TO AMEND THE MOTION; AMEND PAGE 34, SECTION 20.07.005.G TO READ, “THE REVIEW SHALL COMMENCE WITH THE RESOLUTION OF APPEARANCE OF FAIRNESS ISSUES, IF ANY, FOLLOWED BY A ORAL PRESENTATIONS BY THE DIRECTOR OF THE GENERAL BACKGROUND OF THE PROPOSED DEVELOPMENT AND THE ISSUES IN DISPUTE, AND THE OTHER PARTIES. AFTER THE DIRECTOR’S PARTIES’ PRESENTATIONS, THE CITY COUNCIL MAY ASK CLARIFYING QUESTIONS...”

Councilmember Plunkett commented he often learned from the oral presentation as well as the written materials. He agreed some people may prefer to write their argument, others may prefer to provide it orally. When citizens appeal a development, the developer usually has an attorney to write the brief; requiring a citizen to do the same was not in their best interest. The timeframes are very short and although they may not be tight for an attorney whose job it is to write the brief, the timelines would be difficult for a citizen to meet. He preferred to provide citizens the best opportunity to provide their case.

Councilmember Wilson commented the proposed ordinance allows for written argument and oral question/answer. He asked whether the proposed amendment will allow written argument and require an oral presentation. To address this issue, Council President Bernheim revised the amendment as follows:

“...FOLLOWED BY THE OPPORTUNITY FOR ORAL PRESENTATIONS BY THE DIRECTOR AND THE OTHER PARTIES...”

Mr. Snyder advised if the amendment was approved, he had several clarifying questions for the Council about other procedures that would need to be changed.

To the comment that an attorney was better able to provide written arguments without an attorney a citizen was out of luck, Councilmember Peterson pointed out one of an attorney’s key skills was oral argument. If oral argument was allowed without any written materials, an attorney was better able than the average citizen to provide oral argument. He disagreed with the idea that allowing only oral argument served the citizen better. Requiring written argument allows the information be fact-checked prior to the closed record review. An attorney may be better able to present information in an oral presentation which upon review may not be factual which leaves the appeal in jeopardy. He was also concerned with a process that allowed objection to oral argument, pointing out an attorney would be much better at making objections. He feared allowing oral argument would increase the need for an appellant to be represented by an attorney. He pointed out the proposed ordinance did not exclude oral argument; parties would simply be required to submit a written outline of points they planned to cover. He supported the requirement for a written record.

Councilmember Plunkett preferred to give the citizen as much latitude as possible and to allow them the choice to provide written and/or oral argument. He agreed Council could ask questions during a closed record review but the ability to make oral argument would allow a citizen to emphasize what they felt was most important.

Councilmember Petso recalled during her appeal to the Council, there were objections and claims that information was not in the record. She recalled Mr. Snyder provided both sides an opportunity to submit a letter identifying where in the record information was contained and all claims that information was not in the record were resolved quickly by Mr. Snyder. If oral presentation is not allowed, one of the most powerful tools for citizens to communicate would be lost including the ability to provide a PowerPoint with photographs, diagrams, etc. She agreed via oral argument, the public also has the ability to hear the information. She summarized that allowing PowerPoints and the public to view the process outweighs the advantage attorneys may have via oral argument.

Council President Bernheim pointed out the proposed ordinance requires a clear, written statement of the grounds for appeal and the facts upon which the appeal is based with specific reference to facts in the record.

Councilmember Peterson asked whether a PowerPoint handout would be considered written materials. Mr. Snyder responded that was one of his questions to the Council if this amendment passed. If the amendment did not pass, he clarified the Council was not excluding oral argument, it must be supplemented with written argument. He agreed with the importance of allowing oral argument.

AMENDMENT CARRIED (4-2), COUNCILMEMBERS WILSON AND PETERSON VOTING NO.

Mr. Snyder suggested he draft the following procedural rules:

1. Reasonable time limits for oral argument be established by the Mayor.
2. A procedure be drafted for parties to make objections and provide opportunity to respond. An option would be to continue the public hearing to allow response. The sole basis for objection would be the material cited in argument was not in the record of the proceeding.
3. "Shall" in Section 20.07.004.D.7 and F be changed to "should" (All written submittals ~~shall~~ should be typed on letter size paper...)
4. Does the Council want PowerPoint presentations to be submitted in conjunction with parties' briefs? He suggested any PowerPoint presentation be attached to a brief or rebuttal brief and will not count toward the page count. Council President Bernheim commented as long as a PowerPoint did not contain new information it could be presented along with oral argument

Mr. Snyder advised he would draft a list of rules and procedures for the Council's review in conjunction with consideration of a final ordinance.

Council President Bernheim thanked staff for their work, noting there had been several changes back and forth as well as changes in the composition of the City Council.

Councilmember Peterson did not support the motion, explaining when Councilmembers served in a quasi judicial capacity, they were unable to speak to citizens about issues they may be passionate about. He preferred Councilmembers act as legislators and not judges.

Councilmember Wilson expressed support for the motion, envisioning the process would operate smoothly regardless of the details.

THE VOTE ON THE MAIN MOTION AS AMENDED CARRIED (5-1), COUNCILMEMBER PETERSON VOTING NO.

Mr. Snyder advised a closed record appeal under the interim ordinance was scheduled on October 19. That appeal would be subject to the limitation of written argument; there will not be oral argument as the appeal will proceed under the rules in effect on the date the appeal was filed. He advised the final ordinance and rules and procedures would be presented to the Council in 2-3 weeks.

4. PUBLIC HEARING FOR THE SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (2011-2016).

Councilmember Wilson pointed out all the funding allocations from the assumed passage of the Transportation Benefit District (TBD) vote were in the fourth year and beyond. He assumed that would change if the ballot measure passed. He questioned why the public hearing and Council approval of the Six-Year TIP was being held tonight rather than waiting until after the vote. City Engineer Rob English explained when the Council approved the Capital Facilities Plan (CFP) in December 2009, they requested it be presented earlier in the year. The presentation on the CFP will describe how the CIP and CFP interrelate. If the TBD ballot measure passes in November, he suggested the Council take up the matter in the first quarter of 2011, noting the TBD Board will also be making some key decisions regarding how projects are programmed.

Councilmember Wilson pointed out if the TBD ballot measure failed, some changes may be required such as aggregating expenditures to fewer projects. Mr. English explained if the TBD ballot measure failed, there would not be a need to revise the TIP as the projects programmed for 2011 do not use TBD revenue. In July/August 2011, a new CFP for 2012-2017 would be presented that did not include revenues from the TBD ballot measure.

Transportation Engineer Bertrand Hauss reviewed TIP requirements:

- Revised Code of Washington (RCW) requires that each city update their TIP prior to adoption of the budget.
- Document must contain all regionally significant transportation projects that a City plans to undertake in the next six years.
- TIP is sent to different state agencies as well as the Puget Sound Regional Council (PSRC).
- This data is then used to create a state-wide TIP Database.

Following past practices, the TIP is financially constrained in the first three years (2011-2013) and not financially constrained the last three years (2014-2016). Projects identified in the TIP can receive State and Federal transportation grants. He explained each project has different funding sources. Federal and State grants/local funds are programmed as a source of revenue for some TIP projects. Due to a shortfall in transportation funding, the TIP includes potential revenue from the Transportation Benefit District (TBD):

- Increase of \$40 (in addition to \$20 vehicle license fee approved in 2009),
- Increase to be on November ballot, and
- Identified in the TIP starting in 2014

He reviewed scheduled projects for 2011-2013:

Dayton St. Overlay

Project Description: Overlay Dayton Street from SR-104 to the railroad tracks (poor asphalt condition with many cracks)

Schedule: Preliminary engineering / construction: 2011

Funding: Estimated Total Cost: \$120,000

Fund 112: \$30,000

Fund 412: \$90,000

228th St. SW Corridor Improvements

Project Description: Recommended as #1 project in *Hwy. 99 Traffic Safety and Circulation Study* (conducted in 2006)

Restrict southbound left turn from Hwy. 99 onto 76th Avenue W

New traffic signal at Hwy. 99 @ 228th Street SW (w/ protected LT phasing) to enable safe left turn for the southbound movement from Hwy. 99 to 76th Avenue W and create additional safe pedestrian crossing on Hwy. 99 between 238th and 224th

New traffic signal at 76th Avenue W @ 228th Street SW

Schedule: Preliminary Engineering phase: 30% design completed in 2009

Environmental / Design: 2011-2012

ROW acquisition: 2013

Construction: 2014

Funding: Total Project Cost: \$4.3 million

Design: Federal grant secured

ROW: Federal grant secured

Estimated construction cost: \$3,452,000=> unsecured grant/TBD

Interurban Trail

Project Description: Install missing Interurban Trail link between Mountlake Terrace and Shoreline

Schedule: Design: close to completion
Construction: Spring 2011

Funding: Estimated Total Construction Cost: \$1,327,000
Federal Funding: \$750,000 (secured)
State Funding: \$577,000 (secured)

Main Street. Pedestrian lighting

Project Description: New sidewalk on both sides of Main Street between 5th Avenue and 6th Avenue
Installation of pedestrian lighting on both sides

Schedule: Preliminary Engineering: 2011
Construction: 2012

Funding: Total project cost: \$725,000
Preliminary Engineering: \$115,000 (secured grant)
Construction: \$610,000 (secured grant)

80th Avenue W Walkway

Project Description: Construct walkway on 80th Avenue W between 188th Street SW and 180th Street SW
and on 180th Street SW between 80th Avenue W and Olympic View Drive
Ranked #6 in Long Walkway list (2009 Transportation Plan)

Schedule: State grant application submitted last April/response scheduled Spring 2011 - 100% grant
funding requested
Preliminary Engineering: 2011-2012
Construction: 2013

Funding: Estimated project cost: \$777,000
Preliminary Engineering: \$130,000 (unsecured grant)
Construction: \$647,000 (unsecured grant)

Shell Valley Emergency Access

Project Description: Construct an emergency access road from Shell Valley subdivision to Main Street

Schedule: Preliminary engineering: close to completion
Construction: 2011

Funding: Total construction cost: \$486,500
State Grant: \$250,000 (secured)
Fund 412: \$236,500

226th Street SW Walkway project

Project Description: Install sidewalk on 226th Street SW between SR-104 and 105th Place W (complete safe
pedestrian connection from SR-104 to Sherwood Elementary School)

Schedule: Design: close to completion
Construction: Spring 2011

Funding: Total construction cost: \$139,000
Federal grant: \$139,000 (secured)

Mr. Hauss reviewed other projects scheduled 2014-2016, explaining most projects are funded by potential (TBD) revenue, beginning in 2014. If the TBD passes, those projects would be moved up in the schedule:

Street Overlays

- Ranked #1 in TBD list of projects
- Preservation project

- Design/construction: Begin in 2014

212th Street SW @ 76th Avenue W

- Ranked #14 in TBD list of projects
- Concurrency project (improve Level of Service from LOS F to D) => widen 76th Avenue W / add left turn lane for northbound and southbound movement
- Design: 2014

Madrona Elementary School Walkway

- Ranked #6 in TBD list of projects
- Sidewalk project along 236th Street. SW connecting 2 stretches of SR-104
- Design: 2014

100th @ 238th Signal Upgrades

- Ranked #15 in TDB list of projects
- Preservation project
- Signals over 20 years old
- Design & construction: 2014

Mr. Hauss relayed staff's recommendation that the City Council approve the TIP.

Councilmember Plunkett asked why the signals at 100th & 238th needed to be upgraded if they still worked. Mr. Hauss responded that although the signals still worked, the lifecycle of a signal is 20-30 years. City Engineer Rob English explained the signal needs to be functional for liability reasons. Operation crews are having difficulty locating parts for the signal equipment in the electronic panel. Councilmember Plunkett concluded maintenance costs are increasing and there is the potential for liability if the signal is not replaced at the end of its lifecycle and the electronics fail.

Councilmember Wilson asked how these specific projects were selected, noting several of the projects were not funded in the TIP until 2014. Mr. Hauss answered the projects were ranked according to grant eligibility and other factors.

Councilmember Wilson recalled the Council previously discussed speeds and the level of service on Olympic Avenue and requested staff return with suggestions regarding traffic calming. That was clearly a Council priority and a low cost, yet the TIP does not include any funds for traffic calming in the next three years. Mr. Hauss responded that could be added to the TIP. Traffic calming was deferred last year due to funding issues. It was included in the TIP beginning in 2014.

Councilmember Wilson observed REET Fund 125 can be used for parks and transportation. The Council directed that all REET receipts over \$750,000 would be used for transportation; however, because REET revenues have not exceeded \$750,000 in recent years, all the funds are used for parks. He asked if the funds from Fund 125 for the 4th Avenue Corridor could be redirected to traffic calming, suggesting with a total cost of \$1.25 million, the \$50,000 from Fund 125 allocated in 2011 for the 4th Avenue Corridor project would not accomplish much. Parks & Recreation Director Brian McIntosh explained the most immediate expenditures for the 4th Avenue Corridor are to continue planning to go from the conceptual stage to 15% design. Funds are also allocated to that project as matching funds. The City recently received a \$25,000 grant for gateway treatments, interpretive signage, art, etc.

Councilmember Wilson commented traffic calming is a high priority for citizens and significant public safety improvements can be realized for a small amount of money. He recommended funding be included in the TIP for traffic calming.

Mayor Cooper opened the public participation portion of the public hearing.

Roger Hertrich, Edmonds, referred to the \$2 million in the TIP in 2016 for the Five Corners intersection, noting the project begins with a \$247,000 expenditure in 2014 and \$216,000 in 2018. He expressed concern with allocating funds for design when a determination has not yet been made regarding what is needed at the Five Corners intersection. With regard to the Hwy. 524 and 88th Avenue West intersection improvements, he suggested that project be moved up and funds sought from the State for that project. With regard to annual street overlays, he questioned why there was no funding until 2014. He expressed concern that a portion of the proposed additional \$40 TBD fee would be used for trails and suggested the City fund important projects such as street overlays.

Hearing no further comment, Mayor Cooper closed the public participation portion of the public hearing.

COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE THE SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM AND ADOPT RESOLUTION 1236.

Councilmember Wilson pointed out there were 4 projects in 2011 that utilize City funds. He asked whether \$50,000 for traffic calming could be added to the TIP from the General Fund ending cash balance rather than taking funds from another project. Mr. English agreed that could be done.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO AMEND THE TIP TO ADD \$50,000 FOR TRAFFIC CALMING PROJECTS IN 2011 FROM THE GENERAL FUND ENDING BALANCE.

Councilmember Wilson suggested installation of “your speed is” signs would have tremendous public safety implications and could be one of the most impactful projects done in 2011.

Councilmember Peterson expressed support for the motion and asked whether the Council wanted to provide direction regarding specific locations for traffic calming such as Olympic Avenue. Mr. English responded a general line item was sufficient or the Council could provide direction regarding specific locations. The City has a policy for vetting traffic calming requests to determine whether they were warranted. Mr. Hauss advised staff has identified a few locations where traffic calming was warranted; the Council could identify other locations.

Councilmember Petso did not support the amendment because notice had not been provided to staff, the Council or the public. If the TBD ballot measure is approved, traffic calming projects will be moved up. She preferred to wait for the outcome of the TBD vote and leave the \$50,000 in the General Fund.

For Councilmember Plunkett, Mr. Hauss advised a Citywide Traffic Calming Program was identified in the TBD list of projects with funding of \$50,000/year. Councilmember Plunkett was hesitant for the Council to identify locations for traffic calming and preferred that staff develop a list of locations.

UPON ROLL CALL, THE VOTE ON THE AMENDMENT CARRIED (4-2), COUNCILMEMBERS PLUNKETT, PETERSON, WILSON, AND BUCKSHNIS VOTING YES; AND COUNCIL PRESIDENT BERNHEIM AND COUNCILMEMBER PETSO VOTING NO.

Councilmember Peterson thanked staff for developing the TIP and congratulated them on the receipt of a grant for Main Street lighting.

THE VOTE ON THE MAIN MOTION AS AMENDED CARRIED UNANIMOUSLY.

5. AUDIENCE COMMENTS

Natalie Shippen, Edmonds, explained since an answer had not been provided regarding how the ferry system planned to spend \$26 million on one important project to be completed in Edmonds in the 2029 biennium, she assumed it would be a second slip at the Main Street terminal. A second slip has been the ferry system's priority since 1988 and would allow simultaneous loading and unloading. The ferry system has studied the issue including possible dredging, eel grass, density and extent of microalgae, and intertidal and subtidal zones. Drawings of the current terminal are depicted in several ferry system reports including the overhead loading and the second slip. She summarized the ferry system knew how they planned to spend the \$26 million. Next she relayed that Mr. Clifton's discussions with WSF have related to minimum build alternatives for Edmonds Crossing; minimum build to WSF means two slips. Mr. Clifton's discussions with WSF have referred to federal funding of \$12.3 million, and \$23-\$26 million from the State. She advised her comments in the future will address impacts of a second slip.

Ron Wambolt, Edmonds, commented on the following issues:

1. The explanation that Mayor Cooper promised three weeks ago regarding why the Hearing Examiner was not seeking renewal of their contract has not been provided.
2. A large 50-60 year old tree was improperly removed from City right-of-way on Walnut Street in June; the developer said the removal was authorized by the City, the City disagreed. The Police Department's investigation should be concluded this week.
3. Neither Mr. Hines nor Mayor Cooper has responded to his email asking why the budget workshop estimate for 2010 General Fund revenue was more than \$2 million over the forecast provided in June.
4. The land purchased by the City in December 2008 in front of Old Mill Town has not yet been developed into a park. He suggested completing the park even if electrical service could not be provided.
5. Their condominium recently replaced 15 florescent fixtures in the garage with fixtures consuming 47% less power but provide as much light. The total cost of the project was \$2,000 with the PUD paying two-thirds of the cost. Residents' repayment of the one-third via power savings will take only 15 months.

Don Hall, Edmonds, reported last Friday Edmonds joined several other cities around the world in Park(ing) Day. Five stores in Edmonds transformed the parking space in front of their store into a park. He thanked Stacy Gardea who spearheaded the project, the Chamber of Commerce for providing necessary insurance and Public Works for providing cones. Participating stores included Fabric of Life, Running in Motion, Wooden Spoon, Arista/C'est la Vie/Blue Fish Designs, and Garden Gear. He commented a number of people visited the parks and enjoyed the peace and quiet. He hoped businesses would participate in Park(ing) Day next year.

Betty Larman, Edmonds, explained approximately two years ago the Council purchased the property in front of Old Mill Town, the last green space downtown. One of the Floretum Garden Club members, Rachel Sedgfield, was the caretaker of the garden when Old Mill Town was established in 1972. The Garden Club pledged to maintain the garden after the City purchased the property. An architect donated a design for the landscaping and bandstand. The Garden Club, a 501(c)(3), is fundraising to assist the City with completing the site. Electricity is needed on the site for a water fountain, lighting and power in the bandstand. She summarized it would not only be a garden but a tool for teaching horticulture.

Donna Breske, Edmonds, asked whether it was standard City policy to require fees be paid to the City to have specific code and infrastructure questions answered. In order to obtain answers to two questions, she was told by staff she was required to either apply for a pre-application meeting at a cost of \$655 or apply for a formal building permit with a specific design which costs thousands of dollars. Her two questions are:

1. The previous ECDC and the recently revised ECDC include a grandfather date of July 7, 1977 for stormwater drainage management. Any impervious areas created prior to this date were not subject to management of stormwater runoff. Per staff's interpretation of the previous drainage code, the grandfather date only applies to the site being developed and does not apply to any offsite impervious areas. She asked whether the interpretation of the revised code was the same as the previous drainage code: does the July

1977 grandfather date for management of stormwater flows from impervious areas only apply to the site which is being developed and not to any offsite pre-1977 impervious areas.

2. Per a May 14, 2008 letter from the previous Public Works Director Noel Miller, the City-installed stormwater drainage pipes were in no way installed to promote the development of her lot at 9330 218th Place SW but were installed as an emergency overflow to alleviate flooding incidents to surrounding properties. She asked where the piping system transitioned from an overflow pipe to a drainage conveyance pipe.

Mayor Cooper suggested she provide her questions in writing and he would have the City Attorney address them with Public Works Director Phil Williams.

Mayor Cooper declared a brief recess.

6. PRESENTATION REGARDING 2010 CITIZEN LEVY COMMITTEE

Councilmember Buckshnis explained Jessie Beyer, a member of the 2010 Citizen Levy Committee (CLC) and a CPA, will provide the presentation she gave at the first CLC meeting regarding the difference between governmental accounting and regular financial accounting.

Ms. Beyer explained government operates from the starting point of the budget which is a legal document binding to the administrators of the governmental unit. There are typically two different budgets:

- Estimated Revenue budget – lists revenues e raised pursuant to law during budget cycle
- Appropriates budget – must be enacted into law before governmental administration has legal authority to incur liabilities

Governmental accounting uses funds to account for revenues and expenditures as outlined in the budget. The most common funds are General Fund, special revenue funds, capital projects fund, and debt service. Funds are limited in purpose and scope based on budget. Governments record financial information on a modified accrual basis of accounting. However, they report on the full accrual basis of accounting. This is due to several factors:

- Governments can measure tax revenue before it is collected
- An expenditure (not expense) is recorded when the liability is incurred (such as bonds) even if the amount is known prior to the payment due date

Governments are not in the business of making a profit. The budget is the driver and if revenues exceed expenditures then an increase in net assets is reported and the surplus is generally added to the budget for the following cycle. If the reverse is present, the governmental entity has a deficit.

Ms. Beyer concluded her comments by stating that many of the differences between governmental accounting and regular financial accounting are due to the very different role of a government entity. The objectives of government are more than financial; they include political, social and environmental needs. Governmental accounting requires more transparency because there are many more users of the finance statements.

With regard to questions that have arisen over Police and Fire overtime in 2009, Councilmember Buckshnis explained Fire had \$795,000 in overtime in 2009. Police had \$457,891 and \$79,000 was reimbursed to the General Fund, leaving approximately \$378,900. She explained overtime in the Police Department is often due to backfilling positions when an officer is out on disability. Another reason overtime occurs is investigating a homicide, missing child, etc.

Councilmember Buckshnis explained the City's policy discusses reporting of General Fund actuals; the City currently uses a working capital approach (current assets minus current liabilities). She displayed examples of General Fund reports from several other cities.

Councilmember Buckshnis clarified her presentation had not yet been made to the CLC. The purpose of her presentation was to increase the Council's understanding of budget amendments. The information presented is based on Governmental Finance Officers Association's Standards (GFOA), research of other cities' websites, and discussions with other Finance Directors and an instructor for the Association of Washington Cities (AWC).

In April 2010 the Council passed Ordinance 3789 and Resolution 1266. The major items are:

- A change in the Monthly General Fund Reports that contain revenue budget, biennium to date, expenditure budget, biennium to date, balance and total balance.
- Timeliness of reporting to the Finance Committee and Council and placement of reports on the City's website for citizen review.
- Quarterly reports to have narrative discussing trends, drivers and assumptions.
- Proper labeling on documents with page numbers and proposed budget amendments are to be part of monthly Finance Meetings.

She provided background provided by MRSC Finance Advisor Mike Bailey in "Amending Your Budget:"

- The legislative body grants authority to the administrative body during each budget.
- Once granted, administrative can spend appropriations up to the budget amount.
- Appropriations are based on estimates of available resources (revenue and fund balances) and history.
- Sometimes spending occurs regardless of amount of revenue, which can be a problem.
- Budgets are adopted at the "fund" level.
- The legislative body can track at a significantly greater level of detail if necessary.
- State law provides that transfers within a fund are permitted as an administrative function provided that the budget was adopted at the fund level

In a traditional environment, the typical reasons to amend a budget are as follows:

- Receipt of additional/unanticipated revenues (grant money, etc.)
- Non-debatable Emergency (RCW 35.33.081) (natural disasters, war, etc.)
- Emergency of lesser nature (RCW 35.33.091) (Council determines need, ordinance must be introduced, public hearing and majority vote plus one is required

In today's economy, Councils are having to re-opening budgets to revise estimates downward. Administrative and legislative should work together to closely monitor revenues. Because the budget or appropriation level may not be tied to the available resources, situations may exist where Councils grant authority to spend public funds that may exceed available resources.

Legislation and Administration need to work together to figure out expense reductions by:

- Monitoring and encouraging caution in expenditures.
- Placing an administrative watch on spending.
- Considering administrative policy directives (freezes on travel, reduction in discretionary spending, furloughs, etc.)
- Considering a legislative policy directive (reducing appropriations for certain budgets items which as of today is non-applicable since our budget cycle is ending: so in October. the legislative body should look closely at 2011 budget numbers to see if realistic).

The GFOA recommends:

- Communicating clearly, honestly and often
- Shrinking revenues require more frequency broadcast of financial condition to public.
- Seeking input and compare as everyone is in the same "boat". All have made cuts - all are asked to do more for less. Understand the environment and broadcast to citizens so they understand.

- Don't over-react – but be prepared. Overreaction can come in the form disaster scenarios that contemplate drastic measures. Being prepared means thinking and planning.

The Council is raising questions because:

- Ordinance 3789 requires vetting through Finance Committee.
- Labeling/descriptions are not adequate (Ordinance 3789).
- Council was asked to transfer approximately \$900,000 to the General Fund without discussion or timing to understand.
- Staff believed that same logic utilized in the 2009 budget amendment applies to logic of new Council but did not ask.
- Attempted subsequent conversations resulted in additional changes requiring another review. Council questions based on first amendment and only some issues resolved.
- June 2010 Budget Report (6-month financials) already reflects changes that the City Council had yet to consider or approve

Reasons the administration should comply include:

- City Council has the highest responsibility in local government.
- City Council has a fiduciary responsibility to understand the financial position of this City.
- City Council has every right to ask questions and expect answers in a timely manner.
- City Council must be informed and have conversations with Administration especially in an economic recession.
- City Council protects the taxpayers

Councilmember Buckshnis recommended the following:

- Start conversations and have an open dialog.
- Show more detail, provide adequate labeling, page numbers and descriptions.
- Comply with Ordinance 3789 and Resolution 1266.
- Give the Council time to review and digest information.
- Restate June Budget Report to reflect current financial situation so Council understands and then can make an informed decision with proposed amendments.
- Ask the Council questions rather than guess at our logic.
- City Council needs to have the final say before actions are taken.

AT 10:00 P.M., COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER WILSON, TO EXTEND THE MEETING FOR ONE HOUR. MOTION CARRIED UNANIMOUSLY.

Councilmember Peterson asked for clarification of the statement in the presentation, “situations may exist where Councils grant authority to spend public funds that may exceed available resources.” Councilmember Buckshnis provided the example of Parks exceeding their revenue budget. Councilmember Petso explained the June financials show the 125 Fund had already overspent the authorization of \$200,000 and the revised budget amendment requests an authority extension to \$500,000. Councilmember Peterson clarified the budget amendment would not exceed available resources and result in deficit spending. Councilmember Buckshnis noted Parks exceeding its spending authority should have been vetted and approved by the Finance Committee.

Councilmember Peterson referred to recommendations for expense reductions such as freezes on travel, reduction in discretionary spending, furloughs, etc., pointing out that had been done. Councilmember Buckshnis clarified this was not intended as a criticism, the information was taken from a paper written by Mike Bailey, AWC.

Councilmember Wilson recalled Councilmember Plunkett telling him when he was first elected that he may not have a full appreciation of the divide between the Mayor and the Council. During his time on the Council he has

come to appreciate that comment. He lost a tremendous amount of faith in the information provided during the Fire District 1 process. He reached a conclusion that none of the numbers would be 100% accurate and that the numbers provided would make the case for the Fire District 1 contract. The previous Finance Director developed numbers and then left the City for employment at Fire District 1. The subsequent Finance Director was thrown into a storm. He did not question the integrity of the finance staff but during that process, he lost respect for the integrity of the numbers that were provided.

Councilmember Wilson commented Mayor Cooper has done a phenomenal job of being open, transparent and honest and the Council could not ask for a better attitude from the senior executive. Although he sometimes disagreed with her, he appreciated Councilmember Buckshnis dogging this issue, noting that when she was satisfied, he would be more than satisfied.

Councilmember Petso commented when she worked as a citizen on the Fire District 1 numbers with Councilmembers Wilson and Wambolt, she reached the same conclusions that Councilmember Wilson did. With regard to overspending the Fund 125, she recognized that adjustments may be necessary due to a deferred project, soil issues, etc. However, the Council needed to be informed that additional funds would be requested in the mid-year budget amendment. This would avoid financial ruckus as well as allow Councilmembers to respond to citizens regarding projects. She suggested the Public Works Director report quarterly to the Community Services/Development Services Committee on ongoing projects. She referred to Dick Van Hollebeke's interview for appointment to mayor where he urged everyone to work together with a unified purpose for the benefit of the City.

Mayor Cooper explained as soon as he delivered the 2011 budget to the Council, one of his and Mr. Hines' priorities will be to do a full accounting of all the Fire District 1 numbers and consolidate the information in one report. With regard to Fire Department overtime, as soon as Mr. Hines discovered the information provided was in error, he corrected it via email. He clarified the Finance Department was unaware that while the Police Department's overtime is all in Line 120, the Fire Department's overtime is in Line 120 – 126, only Fire Chief Tomberg knew that.

With regard to the City's accounting practices and Councilmember Buckshnis' suggestion that things could be done differently, Mayor Cooper assured the City's accounting practices were not wrong. The accounting is done so well the State Auditor continues to commend the City. He has committed to Council President Bernheim and Councilmember Fraley-Monillas that after he delivers the budget to the Council, he will make it a priority to address how the reports can be altered. However, he disagreed with the timing of altering reports in the middle of the budget process. He also attended the AWC workshop on budgeting and agreed changes could be made to improve transparency to the Council and the citizens.

Mayor Cooper complimented the information provided in Councilmember Buckshnis' presentation regarding expenditure reductions and recognized the previous administration's and Council's administrative watch on spending. For example, the previous mayor had a policy that no department director could spend more than \$5,000 without asking permission, even if it was budgeted. He was asked last week if he wanted to retain that policy and he told the directors he did. In order to purchase \$12,000 in ammunition for the SWAT Team, the Police Chief recently had to ask permission to spend the money.

Mayor Cooper assured the budget he presents to the Council will not be like Lynnwood, Federal Way, or Seattle's budget that includes employee layoffs. The reason is because the City has been fiscally conservative for the past 10 years, a tribute to past and present Councils and the former Mayor. He summarized the expenditure reductions listed in Councilmember Buckshnis' presentation represent practices that have occurred over the past decade. Staff is doing its best to comply with the intent of Ordinance 3789 and he recognized some things could be changed. However, changing the reporting method may cost money if the City's software does not support it as well as staff time to make the changes.

With regard to the slide in Councilmember Buckshnis' presentation regarding why administration should comply, Mayor Cooper agreed with all the statements, pointing out all the elected officials have the highest responsibility in local government, the Council as well as the Mayor, thus the division of power between the executive and legislative branch. All elected officials have a fiduciary responsibility to understand the financial position of this City. He agreed the Council had the right to ask questions but the timing of responses depends on the workload of the administration and administration takes their direction from the executive branch of government. There is a tremendous workload due to the Citizen Levy Committee and budget preparation. He summarized all eight elected officials protected the taxpayers. Elected officials have 41,000 bosses (the citizens), the directors have one boss, the mayor; keeping that separation in mind will lead to better teamwork.

With regard to assertions that he has failed to meet with Councilmembers, Mayor Cooper advised his Executive Assistant reported that every request for a meeting by a member of the Council has been honored. He expressed his willingness to discuss his philosophy with Councilmembers even if it was necessary for them to agree to disagree.

7. 2009-2010 MID-YEAR BUDGET ADJUSTMENT.

Finance Director Lorenzo Hines explained the mid-year budget amendment was presented to the Council on August 24. Several questions were answered at that meeting and the adjustment was remanded to the Finance Committee. A special Finance Committee meeting was held on August 30 where questions were answered for 2 hours. It was his understanding that all questions had been answered at that time except for Councilmember Petso's request for an hour meeting with him to address her questions. He has been unable to schedule a meeting with Councilmember Petso. As the adjustment remains with the Finance Committee, he suggested the Chair provide a status update.

Councilmember Plunkett, Chair of the Finance Committee, explained the Council has questions that have not yet been answered. He was reluctant to take action until he had a better understanding of some issues and possibly even an executive session related to personnel.

Councilmember Petso advised an opportunity exists to meet with Mayor Cooper and Mr. Hines later this week. Once that meeting is scheduled, she invited Councilmembers to meet with her to provide their questions and she offered to meet with Councilmembers after the meeting to relay what she learned. She was hopeful that process would be a step toward approving the mid-year budget amendment. She also had policy issues related to the amendment, 1) whether to suspend B Fund contributions for 2010, and 2) whether to transfer the funds set aside for acquisition of new fire trucks to the Public Safety Reserve Fund. She suggested scheduling a time for Council to provide direction to staff regarding those two items as the proposed amendment may need to be revised based on Council direction.

City Attorney Scott Snyder cautioned Councilmembers could send Councilmember Petso their questions and she could report but any appearance of a rolling quorum needed to be avoided. Councilmember Petso also extended her offer to members of the public.

Councilmember Buckshnis explained the day before the August 31 special Finance Committee meeting, a new amendment was provided that changed the numbers and the pages did not match. They have asked to speak with Accountant Debra Sharp regarding those issues. Mr. Hines responded the amendment was initially provided to the full Council on August 24. Adjustments were made at the end of that week that were included in the agenda for the special Finance Committee meeting. Staff briefed the Finance Committee regarding the two additional amendments, 1) regarding the TBD fund, and 2) regarding utility revenues. After the explanation, it was his understanding that everyone understood and they proceeded on to other questions.

Councilmember Buckshnis asked for an explanation of the utility revenues. Mr. Hines responded the revenue estimate from the utility tax increase was reduced from \$726,000 to \$360,000.

Councilmember Plunkett suggested Councilmember Petso introduce her amendments when the Council moved the mid-year adjustment. Councilmember Petso responded the Finance Department needs to know the amendments in advance in order to draft the resolution. Councilmember Plunkett suggested the Council could adopt the amendments and the final resolution returned to Council for approval. Mayor Cooper suggested the Council provide direction regarding those amendments tonight to allow staff to prepare the necessary language in the resolution. He clarified where to place the funds that were set aside for fire equipment was a policy decision. When Mr. Hines asked where to place the funds, he told him to put them in the General Fund ending cash balance and they could be addressed in the 2011 budget. The other option was to include the amendments in the December adjustment.

Councilmember Plunkett referred to Mr. Hines' memo that compared the General Fund balance and General Fund working capital. The memo shows the emergency reserve at \$1.927 million and unrestricted undistributed fund balance of \$4 million. He asked whether \$2 million of the \$4 million was ending cash. Mr. Hines answered the \$4.138 million represents the total residual fund balance in the General Fund. The \$2.175 million represents the estimated working capital for the beginning of 2010. The \$2.175 million is a subset of the \$4.138 million.

Councilmember Plunkett referred to the \$4 million, observing \$2 million of that amount was not ending cash. Mr. Hines explained there is a residual fund balance of \$4.138 million, a beginning working capital balance of \$2.175 million. Councilmember Plunkett asked whether \$4 million represented the ending balance. Mr. Hines referred to the trial balance of the General Fund, advising the assets less the liabilities, the equities section totals \$4.138 million.

Councilmember Plunkett pointed out there is \$2 million in reserve, \$2 million in ending cash and asked where the other \$2 million is. Mr. Hines answered the statements are in the format the City has historically presented to the Council; nothing has changed. The City has used a working capital approach for years. Councilmember Plunkett asked if working capital was different than ending cash. Mr. Hines answered yes; working capital was the amount of cash available to spend.

Councilmember Plunkett observed the amount of working capital and ending cash were different. He asked the amount in working capital. Mr. Hines answered \$2.175 million. Councilmember Plunkett commented there is \$2 million in working capital, \$2 million in reserves and \$2 million in ending cash. Mr. Hines advised the ending cash for calendar year December 31 is \$5.384 million. Councilmember Plunkett referred to the 5-year budget forecast where there is \$2 million in ending cash. Mr. Hines clarified that was working capital. Councilmember Plunkett observed working capital was ending cash. Mr. Hines explained in the last projections, the nomenclature was changed to say beginning working capital and ending working capital.

Mayor Cooper suggested Councilmember Plunkett meet with him and Mr. Hines, pointing out Mr. Hines drafted a memo at his request to explain this two weeks ago. He provided Councilmembers Mr. Hines' spreadsheets and his memo that explained the formula that has been used by at least the last two Finance Directors. He suggested the terminology may be different but this same discussion occurred in October 2009 when the Council deliberated on the 2009 budget process. The ending cash balance will be approximately \$2 million. The memo explains the formula in the spreadsheet. He suggested if the Council had questions, they make an appointment with Mr. Hines and him.

Councilmember Plunkett referred to the October 6, 2009 meeting in which the Council reported all reserve funds were not clearly identified. Council said they needed a better understanding of General Funds. At that meeting, Councilmember Wilson stated that policy ideas, strategy was being made based upon projections. Those are the 5-year forecasts we did not understand the difference between the forecasts and additional information was coming to light. Council reported we understood we were getting documentation but no narrative, no background, no help. Councilmember Plunkett summarized that meeting highlighted that as of October 2009, this information was not clear and it has not been clarified since then. Mayor Cooper offered to

meet with Councilmember Plunkett and encouraged him to read the memo Mr. Hines provided that carefully explained the formula and walked him through what was explained at the Finance Committee meeting, at a director's meeting where Councilmember Buckshnis was present, and on October 6, 2009. When Councilmember Buckshnis was a citizen, there was a long conversation outlined in minutes that were provided to him by the City Clerk. He assured the City was not missing \$2 million; Councilmember Plunkett simply does not understand the accounting practices.

Councilmember Wilson pointed out when Councilmember Plunkett and he agree it is usually because the evidence or the frustration is overwhelming. He expressed support for Councilmember Plunkett's line of questioning, emphasizing the Council should not still be having this conversation a year later. Although he thought he understood the \$6 million, the data provided does not reference \$6 million.

Mayor Cooper agreed it was a complicated formula; as has been explained there is a \$2 million ending cash balance. Mr. Hines met with four members of the Council and four members of the Citizen Levy Committee (CLC). At the end of the meeting, the four members of the CLC understood Mr. Hines' explanation and have emailed him expressing their thanks for Mr. Hines' explanation.

Mayor Cooper found it counterproductive for Councilmembers to suggest funds were missing. He encouraged Councilmembers to read the memo Mr. Hines provided him and to carefully review the spreadsheets. If Councilmembers still had concerns, he encouraged them to ask specific questions. Councilmember Wilson commented his interpretation of the Council comments was not that funds were missing. The basic question was \$6 million was on certain documents, yet reports provided during the year show a \$2 million ending cash balance and there is \$1.9 million in emergency reserve fund but it is not clear where the other \$2 million is on paper. His understanding was the other \$2 million was used to manage payments. Mayor Cooper asked whether removing liabilities resulted in the ending cash balance. Mr. Hines agreed. Mr. Hines explained only the cash that is freely available for new liabilities is reflected; cash that is already obligated for accrued liabilities from the prior year is not reflected. Previous Finance Directors have only shown the cash that is unobligated. He advised the \$6 million was reflected in the CAFR once a year due to reporting requirements. Last year the figure was \$5.2 million, this year it is \$6.1 million.

Councilmember Wilson observed the \$6 million includes the Public Safety Emergency Reserve Fund, all the money that is referred to as the ending fund balance and money set aside to pay known liabilities. Mr. Hines explained the \$6 million includes equity balances from Fund 001 General Fund, Fund 004 Criminal Investigation Fund, and 006 Emergency Reserve Fund. Adding those equities together totals the residual fund balance. The City typically considers those as separate funds but they are rolled together in the CAFR.

Councilmember Wilson asked the meaning of residual fund balance. Mr. Hines answered it was assets, less liabilities. There is a certain subset of the residual fund balance that can be isolated as working capital which is done using the balance sheet. Councilmember Wilson clarified Mr. Hines was calling working capital the unobligated funds. Mr. Hines agreed. In the 5-year forecast the beginning balance is the unobligated cash, expected revenue and expenses, and the ending unobligated balance at year end. Councilmember Wilson observed the unobligated ending balance was the beginning balance of the following year. Mr. Hines agreed, it would be the working capital figure. In summer 2008 when the 2009-2010 budget was developed, it was estimated that the beginning working capital for the General Fund would be \$1.273 million. Once actuals for 2009 were available, the beginning working capital was \$2.175 million. The proposed amendment will add \$800,000-\$900,000 to the General Fund beginning balance. Councilmember Wilson suggested staff's use of layman terms when describing the fund balances would be helpful to the Council.

Council President Bernheim planned to schedule a brief appointment with Mayor Cooper and Mr. Hines to pose his questions regarding the budget adjustment. He suggested scheduling the mid-year budget adjustment on the September 28 agenda and give all Councilmembers the opportunity to have their remaining questions answered before then. He was hopeful the Council could approve the budget adjustment at that time.

Mayor Cooper suggested Councilmembers provide direction on the items Councilmember Petso raised, into which fund the money set aside for fire equipment should be placed and whether contributions to the B Fund would be suspended for 2010.

Councilmember Wilson inquired about the definition of the B Fund. Mayor Cooper explained the Council has historically set aside \$350,000/year for purchase of police cars and other fleet. Mr. Hines advised it was Fund 511 in the budget book. Mr. Hines relayed that suspension of the contribution began in 2009 as a cost saving measure. It is an annual transfer from Fund 001 General Fund into Fund 511 Equipment Rental Fund. In 2009 the contribution was suspended and the \$350,000 retained in the General Fund. The proposed amendment carries forward the direction of the prior Council in the 2-year budget.

Councilmember Wilson explained funds were transferred into Fund 511 Equipment Rental Fund to purchase new cars in the future. He clarified suspension of that contribution was an administrative entrepreneurial action last year; the Council did not provide that direction. There was a resolution of support that was not seconded.

Councilmember Buckshnis explained Mr. Hines met with CLC members Gatjens, Reed and Haug. Mr. Reed emailed her today, requesting an answer to his question regarding the General Fund. Mr. Hines advised the two amounts Mr. Reed was questioning in the balance sheet were related to the City's relationship to the Edmonds Center for the Arts (ECA). The City issued bonds on the ECA's behalf and the ECA pays the City for those bonds. It is money the ECA pays the City to pay their bond and because the City incurred the debt, it must be shown in the liability section.

Councilmember Buckshnis explained last year the Council Contingency Fund was at \$93,136 and it is now \$78,779. She asked for a reconciliation of the Contingency Fund. According to former Mayor Haakenson, \$25,000 would have been added to the fund. Mr. Hines answered there is a \$25,000 appropriation under the miscellaneous category in the Council budget. That \$25,000 is backed up by the Council Contingency Fund. As the Council spends down the \$25,000 in the miscellaneous appropriation, it also spends down the Council Contingency Fund. Councilmember Buckshnis asked for an accounting of the expenditures from the Contingency Fund in 2009.

Councilmember Peterson expressed support for Council President Bernheim's suggestion. He pointed out this was the 2009-2010 mid-year budget adjustment and there would be another budget adjustment at the end of the year, another mid-year budget adjustment in 2011 and another at the end of 2011 and so on. Mid-year budget adjustments were not out of the ordinary for City government; as revenues and expenses change, the Council must approve budget adjustments. He assured the City was not on the brink of disaster because a mid-year budget adjustment was necessary.

Councilmember Petso advised she was willing to place the money set aside for fire equipment into the Public Safety Reserve fund and/or undo the suspension of B Fund contributions. By suspending B Fund contributions, the City was living off its assets. The contributions have only been suspended once under a perception there was a dire budget emergency. The contributions have been made in the past so that when a new vehicle was needed, most of the money was available for that purchase.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCIL PRESIDENT BERNHEIM, TO HAVE THE MID-YEAR BUDGET ADJUSTMENT RETURN TO COUNCIL WITHOUT A SUSPENSION OF THE B FUND CONTRIBUTIONS FOR 2010. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCIL PRESIDENT BERNHEIM, THAT THE MID-YEAR BUDGET AMENDMENT RETURN TO THE COUNCIL WITH THE FUNDS SET ASIDE IN THE 511 FUND FOR FIRE EQUIPMENT TRANSFERRED TO THE PUBLIC SAFETY RESERVE FUND RATHER THAN THE GENERAL FUND.

Councilmember Peterson pointed out there was nearly \$2 million in the emergency reserve fund. There are also funds in the Public Safety Fund whose purpose has not been defined by the Council. He was hesitant to have a balance of over \$1 million in an undefined fund when the City was, 1) considering a levy, and 2) beginning contract negotiations with employees. The City had plenty of legitimate shortages where those funds could be used. Further, those funds were originally transferred from the General Fund.

Councilmember Wilson expressed concern with using one-time dollars for operational purposes which has result in spending down reserves. The City was affected not only by the recession but also by the continued use of one-time dollars. He preferred to set aside one-time dollars rather than mix them with into general operations. When the Mayor presents the preliminary budget, he wanted to ensure annual expenditures did not exceed annual revenues. The Council could also move the funds later such as to Fund 509, the firefighters pension fund, that has an unfunded actuarial liability of \$8-\$10 million.

MOTION CARRIED (6-1), COUNCILMEMBER PETERSON VOTING NO.

COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO EXTEND THE MEETING 30 MINUTES. MOTION CARRIED UNANIMOUSLY.

Councilmember Plunkett pointed out he has been very careful to say the City is not missing \$2 million; it is simply an accounting issue. He pointed out that not all the questions were answered at the special Finance Committee. Two CPAs on the CLC met with Mr. Hines; one of the CPAs stated at a recent CLC meeting that he was confused. Councilmember Plunkett suggested the questions he has asked reflected questions all Councilmembers have. He did not find the email or presentation provided by Mr. Hines to be helpful.

Councilmember Buckshnis did not support moving the \$580,000 in TBD revenue from the Street Fund into the General Fund. Mr. Hines explained those funds would eventually be transferred to the Street Fund. They come in through the General Fund, are transferred through the 631 Fund into the 111 Fund. Councilmember Buckshnis asked whether \$120,000 was being moved back into the General Fund. Mr. Hines answered the \$120,000 reduced the \$700,000 originally expected in TBD revenue to \$580,000. Mayor Cooper clarified it was simply adjusting the estimated receipt.

Councilmember Wilson referred to Mr. Hines' response to Mr. Reed's email that the City sold bonds on the ECA's behalf and the ECA pays those bonds. If the ECA cannot cover the debt service, the City is responsible. The City is now covering some of that debt service and accruing in the City's balance sheet what they will pay. If the City is paying debt service that the ECA was expected to pay, how did the City cover that debt service if funds had not been appropriated. Mr. Hines responded under the current agreement with the ECA, they pay a portion of the debt service and the City pays a portion of the debt service. The ECA provides a payment every six months which is added to the City's portion and submitted to the bond underwriter. The ECA is currently paying their obligation and the City is paying their obligation. The amount Mr. Reed referred to was the amount in the City's balance sheet that reflects the liability for the bonds issued on behalf of the ECA. Because the City issued the bonds, they are the City's liability. The City also reflects a "due from" in accounts receivable from ECA in approximately the same amount. There are other smaller amounts in the due from and deferred revenues; the biggest is the ECA.

Councilmember Wilson observed if the City were required to make the ECA's portion of the bond payment, it would require a budget adjustment. Mr. Hines agreed it would.

Councilmember Wilson suggested the Council may need a dedicated person to address Council finance questions, a 20 hour/week person for the next 3 months who reports directly to the Council President. The Council has been placing a tremendous workload on Finance staff and the Council may want to consider allocating funds for some assistance. Council President Bernheim offered to schedule it for discussion by the Council.

Councilmember Plunkett asked whether Councilmember Petso received an answer to her September 14 memo to the Mayor requesting clarification of \$1.8 million identified as other. Councilmember Petso planned to address that in her meeting with Mr. Hines and Mayor Cooper later this week. She hoped the meeting would improve her understanding as well as allow her to communicate the answers to her questions to others.

8. **EXTENSION OF SUNSET DATE FOR CITIZENS ECONOMIC DEVELOPMENT COMMISSION.**

COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER PETSO, TO RESCHEDULE THIS ITEM TO A LATER MEETING. MOTION CARRIED UNANIMOUSLY.

9. **CAPITAL FACILITIES PLAN (2011-2016).**

COUNCIL PRESIDENT BERNHEIM MOVED, SECONDED BY COUNCILMEMBER WILSON, TO POSTPONE THIS ITEM.

Councilmember Petso asked if postponing this item caused staff difficulty with the upcoming public hearing. City Engineer Rob English responded the public hearing was scheduled on October 5. Tonight's presentation was to introduce the item to the Council and provide an opportunity to ask questions and provide input.

MOTION CARRIED UNANIMOUSLY.

10. **REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF SEPTEMBER 14, 2010.**

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCIL PRESIDENT BERNHEIM, TO CONSIDER THE MEETINGS REPORTED VIA THE MINUTES IN THE RECORD. MOTION CARRIED UNANIMOUSLY.

11. **MAYOR'S COMMENTS**

Mayor Cooper had no report.

12. **COUNCIL COMMENTS**

Councilmember Petso relayed a question from the Port Commission regarding when Dayton Street would be paved. It was her understanding that project was scheduled in 2011. The paving could not be done until Sound Transit completed their work on the road.

Mayor Cooper congratulated the Chamber of Commerce on the successful September 12 car show. The Mayor's Trophy went to a 1947 Plymouth Coupe pulling a matching teardrop trailer that is owned by an Edmonds resident. Councilmember Peterson offered to pass on the Mayor's comments to the Chamber of Commerce.

Councilmember Wilson found this meeting was very helpful. There was a cathartic moment and that needs to happen to resolve pent up issues. He recognized staff's frustration with the Council and the Council frustration with administration, noting that is changing. The Council questions are a result of transparency and openness that has not existed for a long time. The Council passed budget amendments in the past because they were intimidated into doing so. Although emotions were high at this meeting, the tenor of the meeting was nothing like past meetings.

Councilmember Plunkett referred to Councilmember Wilson's suggestion that the Council hire a financial person, explaining his reference to an executive session was to discuss that position. He supported hiring a financial assistant for the Council as soon as possible.

Councilmember Buckshnis also expressed her support for hiring a financial assistant for the Council. She also supported improved transparency of the General Fund.

13. ADJOURN

With no further business, the Council meeting was adjourned at 11:33 p.m.